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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/906,493	08/05/1997	WILLIAM T. FREEMAN	MERL-1163	6957

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 10/28/2002

#26

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliance  
With 37 CFR 1.192(c)**

Application No.

08/906,493

Applicant(s)

FREEMAN ET AL.

Examiner

Vu Le

Art Unit

2613

*W*

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The Appeal Brief filed on 17 July 2002 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

To avoid dismissal of the appeal, applicant must file IN TRIPLICATE a complete new brief in compliance with 37 CFR 1.192 (c) within the longest of any of the following three **TIME PERIODS**: (1) **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer; (2) **TWO MONTHS** from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. **EXTENTIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. ☐ The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. ☐ The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. ☐ A single ground of rejection has been applied to two or more claims in this application, and
  - (a) ☐ the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
  - (b) ☒ the brief includes the statement required by 37 CFR 1.192(c) (7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. ☐ The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet

*Vu Le*  
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Primary Examiner  
Art Unit: 2613

Continuation of 9. Other (including any explanation in support of the above items):

Pertaining to item IX (Grouping of Claims) of the Appeal Brief and in reference to "checked" item 6(b) above, in the Brief, a statement was made that claims 1, 6-7, 9, 11, 32-33 and 37-38 stand and fall together, that claims 15, 16-17, 20-21 and 41-42 stand and fall together, and that each of claims 5, 8, 10, 12, 13, 14, 18, 19, 34, 35, 36, 39, 40, 43, 44 and 45 stands and falls alone. Therefore, the arguments in the Brief must address why each claim group and each claim that stands and falls alone are "separately patentable" (37 CFR 1.192(c)(8)). The arguments in the Brief fails to sufficiently address this.

[MPEP 1206]: "It should be noted that 37 CFR 1.192(c)(7) requires the appellant to perform two affirmative acts in his or her brief in order to have the separate patentability of a plurality of claims subject to the same rejection considered. The appellant must (A) state that the claims do not stand or fall together and (B) present arguments why the claims subject to the same rejection are separately patentable. Where the appellant does neither, the claims will be treated as standing or falling together. Where, however, the appellant (A) omits the statement required by 37 CFR 1.192(c)(7) yet presents arguments in the argument section of the brief, or (B) includes the statement required by 37 CFR 1.192(c)(7) to the effect that one or more claims do not stand or fall together (i.e., that they are separately patentable) yet does not offer argument in support thereof in the "Argument" section of the brief, the appellant should be notified of the noncompliance as per 37 CFR 1.192(d). Ex parte Schier, 21 USPQ2d 1016 (Bd. Pat. App. & Int. 1991); Ex parte Ohsumi, 21 USPQ2d 1020 (Bd. Pat. App. & Int. 1991)."

Furthermore, items VII and VIII in the Brief should be placed under item X (Arguments) to comply with proper order as specified under 37 CFR 1.192 (c).